

**§ 134.302 Who may appeal.**

Appeals from size determinations and SIC code designations may be filed with OHA by the following, as applicable:

- (a) Any person adversely affected by a size determination;
- (b) Any person adversely affected by a SIC code designation. However, with respect to an 8(a) contract, only the Associate Administrator for Minority Enterprise Development may appeal a SIC code designation;
- (c) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel; or
- (d) The procuring agency contracting officer responsible for the procurement affected by a size determination.

**§ 134.303 No absolute right to an appeal from a size determination.**

It is within the discretion of the Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, he or she will issue an order denying review, and specifying the reasons for the decision.

**§ 134.304 Commencement of appeals from size determinations and SIC code designations.**

(a) Appeals from size determinations and SIC code designations must be commenced by serving and filing an appeal petition as follows:

- (1) If appeal is from a size determination in a pending procurement or pending Government property sale, then the appeal petition must be served and filed within 15 days after service of the size determination;
- (2) If appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be served and filed within 30 days after service of the size determination;
- (3) If appeal is from a SIC code designation, then the appeal petition must be served and filed within 10 days after the issuance of the initial invitation for bids or initial request for proposals or quotations.
- (b) An untimely appeal will be dismissed. However, an appeal which is untimely under paragraph (a)(1) of this

section, with respect to a pending procurement or sale, may, if timely under paragraph (a)(2) of this section, proceed with respect to future procurements or sales.

**§ 134.305 The appeal petition.**

(a) *Form.* There is no required format for an appeal petition. However, it must include the following information:

- (1) The Area Office which issued the size determination, or the contracting office which designated the SIC code;
- (2) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;
- (3) A full and specific statement as to why the size determination or SIC code designation is alleged to be in error, together with argument supporting such allegations; and
- (4) The name, address, telephone number, and signature of the appellant or its attorney.

(b) *Service of size determination appeals.* The appellant must serve the appeal petition upon each of the following:

- (1) The SBA official who issued the size determination;
- (2) The contracting officer responsible for the procurement affected by a size determination;
- (3) The business concern whose size status is at issue;
- (4) All persons who filed protests; and
- (5) SBA's Office of General Counsel.

(c) *Service of SIC appeals.* The appellant must serve the contracting officer who made the SIC code designation.

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate identifying each person or governmental agency which was served with the notice of appeal, and how and when each of those persons or governmental agencies was served.

(e) *Dismissal.* An appeal petition which does not contain all of the information required in paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.